

# Bureau of Indian Affairs

## Government-to-Government Consultation Policy

Pursuant to the President’s Executive Order 13175 of November 6, 2000, and in consultation with tribes, the following government-to-government consultation policy is issued. This policy will remain in effect until such time it is published in the Indian Affairs Manual (IAM) or is superseded by another policy.

### I. INTRODUCTION

More than 550 American Indian tribes in the United States are recognized by the Secretary of the Interior as having a special legal relationship with the United States. This legal relationship is most often called the government-to-government relationship. It is through this relationship that the Bureau of Indian Affairs has a duty to consult with tribal governments. The following policy illustrates the guidelines that the Bureau of Indian Affairs will follow for consultation with tribal governments.

### II. BACKGROUND

The government-to-government relationship is not new, but has strong roots that took hold with the very earliest contact between the American Indians and the first European settlers. The settlers and the tribal leaders dealt with each other as separate sovereigns and that relationship is the foundation of all dealings that have taken place between the United States and Indian tribes throughout the history of the Nation. This Indian policy has found its way into federal statutes and case law and into Executive Orders. As nations separate from the United States, the internal affairs of tribes are the responsibility of the tribal entity and are not to be tampered or interfered with by the United States.

The Bureau of Indian Affairs is the lead federal agency charged with carrying out the United States’ relationship with Indian tribal governments. It is also responsible for overseeing the trust obligations that the United States has to protect tribal property and resources. Thus, most of the contacts between tribal government officials and United States government officials take place within the various offices of the Bureau of Indian Affairs. The Bureau has numerous local or “agency” offices that deal most closely with day-to-day issues facing tribal governments. The Bureau also has 12 regional or “area” offices; its Central office is located in Washington, D.C. within the U.S. Department of the Interior. At the Department of the Interior’s Central Office, tribal leaders often work closely with political officials in the Office of the Secretary of the Interior and in the Office of the Assistant Secretary - Indian Affairs.

Tribal leaders also have significant government-to-government contact with officials of the local, regional and central offices of other Department of the Interior agencies, including the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Minerals Management Service, Bureau of Reclamation, and Office of Surface Mining.

### III. PURPOSE

The purpose of this consultation policy is to set forth appropriate guidelines that are understood and adhered to by all parties. It is vital to the health of the government-to-government relationship that all contacts and consultation with Indian tribal leaders throughout the Bureau be conducted in a professional and respectful manner and in accordance with the following guidelines. Only by using such guidelines can misunderstandings be avoided and the tribes with the United States can move Indian policy forward.

### IV. DEFINITIONS

**"Consultation"** means a process of government-to-government dialogue between the Bureau of Indian Affairs and Indian tribes regarding proposed Federal actions in a manner intended to secure meaningful and timely tribal input. Consultation includes that Indian tribes are:

1. to receive timely notification of the formulated or proposed Federal action;
2. to be informed of the potential impact on Indian tribes of the formulated or proposed Federal action;
3. to be informed of those Federal officials who may make the final decisions with respect to the Federal action;
4. to have the input and recommendations of Indian tribes on such proposed action be fully considered by those officials responsible for the final decision; and
5. to be advised of the rejection of tribal recommendations on such action from those Federal officials making such decisions and the basis for such rejections

Consultation does not mean merely the right of tribal officials, as members of the general public, to be consulted, or to provide comments, under the Administrative Procedures Act or other Federal law of general applicability.

**"Federal action"** means regulations, legislative comments or proposed legislation, the budget, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Federal action includes the development of federal policies under which the tribe must take voluntary action to trigger application of the policy.

**"Indian tribe"** means an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as

an Indian tribe pursuant to section 479a of title 25, United States Code.

**"Legislation"** means proposed legislation or legislative comments to be presented to Congress for enactment that will affect tribal governments, communities, members, economies, trust resources or assets, treaty rights, sacred sites, public health, safety welfare or other interest.

**"Collaboration"** means the act of working jointly toward a common objective.

**"Tribal government"** means the governing authority of an Indian tribe as recognized by the Department of the Interior or authorized tribal organization.

### V. PRINCIPLES

In formulating and implementing policies affecting Indian tribal governments, the Bureau will be guided by the following principles:

1. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions.
2. The United States recognizes the ongoing right of Indian tribes to self-government and supports tribal sovereignty and self-determination and continues to work with Indian tribes on a government-to-government basis concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.
3. Federal actions shall be guided by respect for Indian tribal self-government and sovereignty, for tribal treaty rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.
4. Federal actions shall favor maximum tribal participation with the goal of consultation and collaboration in federal decision making.
5. Federal action shall defer to the laws and policies established by Indian tribes to the extent permitted by law.
6. The Bureau shall maximize the use of technology to facilitate interactive exchanges with tribes and notify affected tribes that written comments are permitted and will be considered.

### VI. STEP-BY-STEP THROUGH THE CONSULTATION PROCESS

Consultation between the Bureau of Indian Affairs and the Indian tribes shall conform to the following procedures. These procedures allow flexibility and discretion to the Bureau depending on the matter under consultation. The three major procedural steps of consultation are:

- A. Pre-Decisional Scoping
- B. Developing the Bureau Proposal
- C. Implementation of Final Federal Action

#### A. Pre-Decisional Scoping

Consultation should be initiated as early in the Bureau’s decision making process as possible. Consultation should begin when the Bureau knows enough about a proposed action to present a coherent proposal and a suggested initial list of issues.

Early consultation with tribal leadership is vital for several reasons. Without early consultation, the Bureau may develop proposals based on an incomplete and anecdotal understanding of the issues that surround a particular matter. As a result, Bureau proposals often create severe unintended consequences for tribal governments. Issues in Indian country are often more complex than they seem at first, in part because of the great diversity among tribes and the circumstances they face, as well as the long history surrounding the development of federal Indian policy.

An open process in the initial stages creates better and more efficient consultation. For example, early consultation with Tribal governments on the scope and impact of a Bureau proposal may provide the basis for the Bureau determining that no action is necessary. More broadly, pre-draft consultation helps insure that real problems are identified at the beginning and properly studied; that issues that are of no concern do not consume time and effort; that subsequent drafts are balanced and thorough; and that the delays and costs occasioned by redoing an inadequate draft are avoided.

For example, consultation should take place:

- 1) Before the Bureau begins drafting proposed regulations;
- 2) Before the Bureau publishes proposed regulations in the Federal Register;
- 3) Before proposed legislation is introduced at the request of the Bureau; and
- 4) Before the Bureau formulates or implements policies or other actions having implications for tribes.

#### 1. Start consultation immediately after you have enough information.

Consultation cannot be useful until the Bureau knows enough about the proposed action to identify most of the affected tribes, and to present a coherent proposal and a suggested initial list of issues.